

LYDIA DARLENE SHEARS

IBLA 83-808

Decided September 26, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 78277.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Lydia Darlene Shears, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lydia Darlene Shears appeals the decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 1, 1983, which declared the unpatented Jay Lu #10 lode mining claim, N MC 78277, abandoned and void for

failure to file on or before December 30, 1981, and December 30, 1982, evidence of annual assessment work or a notice of intention to hold the claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant included a copy of the proof of labor for the subject claim as recorded in Humboldt County, Nevada, for the year 1982. She stated that a copy of the proof of labor, showing serial N MC 78230, for 1981 had been sent to BLM after recording in the county. Appellant does not say that the 1982 proof of labor was transmitted to BLM after recording in Humboldt County. She states that her husband died in April 1982, and she turned the claim over to Jim and Aimee Akutsu.

[1, 2] Under section 314 of FLPMA, the owner of a mining claim located on Federal lands must file a notice of intention to hold the mining claim or evidence of the performance of annual assessment work on the claim, both in the county where the location notice is recorded and in the proper office of BLM on or before December 30 of each year. When it enacted FLPMA, Congress made this requirement mandatory, not discretionary, and failure to comply timely is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981).

Filing is accomplished only when a document is delivered to and received by the proper BLM office. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

Regulation 43 CFR 3833.3(a) requires that evidence of transfer of an interest in an unpatented mining claim be filed with the proper office of BLM within 60 days after the transfer has been completed. Transfer of title to the Jay Lu #10 mining claim from Lydia Darlene Shears to Jim H. Akutsu, Aimee T. Akutsu, Paul H. Kurose, May M. Kurose, Joe A. Kubuta, and Chieko Kubuta by quitclaim deed dated August 25, 1982, should have been filed with BLM by October 25, 1982. The document was actually received by BLM August 11, 1983.

As no proof of labor or notice of intention to hold the Jay Lu #10 mining claim was received by BLM by December 30, 1982, it was proper to declare the claim abandoned pursuant to the provisions of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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R. W. Mullen  
Administrative Judge

